

28 OCTOBER 2014

NEW FOREST DISTRICT COUNCIL

APPEALS PANEL

Minutes of a meeting of the Appeals Panel held at Bransgore Village Hall, Bransgore on Tuesday, 28 October 2014.

Councillors:

p A R Alvey
p A T Glass
p Mrs A E McEvoy

Councillors:

p D B Tipp
p C A Wise

In Attendance

Cllr J Penwarden (Local Ward Councillor)

Officers Attending:

Ms L Clark, Miss J Debnam, D Gruber (New Forest National Park Authority), and Ms S Kiss (Hampshire County Council)

Also Attending:

Parish Cllr S Owen (Bransgore Parish Council)

Objectors:

Mr W Casey	Mrs C Hood
Ms E Cochrane	Mr P Hood
Mr B Cox	Ms J Kayman
Mrs H Dancey (on behalf of the resident of 1 Cranwell Close)	Ms M Page
Mr B Dyson	Ms D White

10. ELECTION OF CHAIRMAN.

RESOLVED:

That Cllr Alvey be elected Chairman for the meeting.

11. DECLARATIONS OF INTEREST.

No Councillor present declared any interest in this matter.

12. TREE PRESERVATION ORDER NO. 12/14 (REPORT A).

The Hearing was preceded by a visit to the site during which the Panel viewed the tree to assess its condition and the amenity value it provided within Cranwell Close, Halton Close and the surrounding area. TPO 12/14 protected 1 cedar tree in the pavement adjacent to 1 Cranwell Close, Bransgore. The Panel had noted that the tarmac pavement around the base of the tree had been raised and was in need of repair; and also that the wall to the rear garden of 1 Cranwell Close, in private ownership, was being damaged by the roots and would require repair. The Panel had viewed the tree from within the garden of 1 Cranwell Close.

Members were reminded of the tests of amenity value and expediency that must be applied in determining whether or not to confirm the Order.

Mr Casey, Chairman of the Burley Road Management Company Ltd, advised the Panel that the Management Company owned and managed some 88 trees on this estate that were protected by Tree Preservation Orders. The Management Company took a pro-active approach to their management and valued those trees, with no concerns about the additional controls imposed by statutory protection. This tree was within the ownership of Hampshire County Council and had been largely neglected. It created a considerable nuisance from the branches and other materials that were shed. Residents would not use the adjacent car parking spaces because of the risk of falling branches damaging vehicles. The tree had lifted the pavement around the base of its trunk, and was now a significant obstruction to anyone with restricted mobility. The rear garden wall adjacent to the tree was also being damaged and was becoming unstable. The residents had not taken any action that would threaten the tree and the imposition of the Tree Preservation Order had caused considerable resentment, crystallising local dislike of the tree and promoting the wish to see it removed. Historical pruning along the boundary with 1 Cranwell Close had created an asymmetric form that would make it more vulnerable to wind forces. Local residents had been canvassed for their views and 37 of the 44 respondents had considered that the tree was not adding any amenity value to the area. Requests to Hampshire County Council for inspections and remedial work received slow responses, sometimes weeks before urgent remedial work was carried out. Local people had no faith that the tree would be properly managed in the future, and it would continue to represent a significant problem, generating concerns about the safety of the tree.

In answer to questions from the Tree Officer, Mr Casey considered that the imposition of a Tree Preservation Order on this tree was different to the Order protecting the other trees on the estate. That had been in place throughout and was an accepted part of the management of the grounds. The Management Company had managed their trees to maintain them safely in their environment. They could not manage this tree and it was causing damage. Local people disputed that it provided any amenity value and in fact argued that it removed the use of the amenity provided by the car parking spaces under the tree.

In answer to questions from Members of the Panel, Mr Casey advised that branches fell from the tree about 4 times a year, with the County Council requested to remove partially fallen branches about twice a year. They usually took some weeks to respond. If the Management Company had control of this tree they would apply to have it felled and would replant with an alternative species. They did not have any specific information about the physical condition of this tree as it had not been included in the tree safety survey that they had recently commissioned for the trees within the Management Company's control. There had not been any reported accidents as a result of the pavement being lifted around the base of the tree. On

the last occasion the tree had been inspected Mr Casey had been told, by the inspecting tree officer, that it was unlikely that funding would be made available to repair the pavement. Mr Casey did not consider that the trunk of the tree was growing to any significant degree, but the overhanging branches were still growing vigorously.

Ms Cochrane, another objector, advised the Panel that the assessment of the amenity value provided by the tree should, by definition, require that the tree provided pleasure, and it did not. It was too large for its situation and the debris that fell from it was all-pervasive and caused problems in keeping things clean around it. She also questioned whether the tree was inspected frequently enough to ensure its continuing safety.

Mr Gruber, the Tree Officer, advised that Panel that the Order had been made at the request of the County Council who feared that residents would exercise common law rights to prune the tree up to their boundaries, which would create further asymmetry in the canopy and consequently threaten the tree's stability and long term retention. He had assessed the tree against the criteria set out in the "Tree Evaluation Method for Preservation Orders" (TEMPO) form that was the nationally recognised standard. He went through the form and explained the basis on which he had awarded the tree an overall score of 14, which indicated that a Tree Preservation Order was defensible. The form was set out on page 21 of the report. The nuisance and maintenance issues that were raised by the objectors could be addressed through pruning and sweeping, in common with any other tree. He considered that the fact this Order had been imposed only recently, while other trees on the estate had been protected for some years, had no relevance to the consideration of the merits of this Order.

In answer to questions from the objectors Mr Gruber advised the Panel that:

- The tree had no visible defects that indicated that it was vulnerable and would fail. No guarantee could however be given in respect of any tree. It was not possible, either, to predict the direction in which a tree might fall;
- The amenity value provided by the tree was inevitably a subjective judgement. In this case however there could be no dispute that this was a significant and prominent tree, clearly visible from public viewpoints.
- The TEMPO form measured the amenity value provided by the tree but did not include any technical evaluation of its structural integrity. Nor did it take any account of the effect of the tree on people living close to it.
- The tree was large, but was not unduly exposed to the prevailing south westerly winds as there were other substantial specimens, 2 oaks and a beech, in reasonable proximity;
- Evergreen trees were more vulnerable to high winds in the winter than deciduous trees that had shed their leaves

In answer to questions from the objectors, particularly Mrs Dancey, Ms Kiss, the County Council's Tree officer who had requested the imposition of the Order, advised the Panel that:

- As the owner of the tree the County Council was responsible for remedying any damage caused by it;
- The County Council had not received a formal claim from Mrs Dancey or Mrs Davies regarding damage to 1 Cranwell Close, particularly the garden wall. Until such a claim had been received no proper evaluation could take place. In this instance it was unlikely that the County Council would not accept that the

tree's roots were damaging the wall. They would then develop an engineering solution that would be agreed with the householder before being carried out. These were normally one-off permanent repairs that did not need to be repeated.

- The damage to the pavement could be repaired, removing the damaged tarmac and replacing it with a flexible new surface that would not crack and would accommodate future growth. The surface would be sloped to allow proper access, accommodating the raised levels caused by the roots. This work would be necessary for safety reasons and would therefore qualify to be funded, although she could not give any indication of the likely timescale as that would be under the control of the County Highways Engineer.
- Most trees within the County Council's ownership were inspected on a 5 yearly basis. This tree was inspected much more frequently. This was a visual inspection only, in accordance with normal best practice, unless a defect was identified that would require further investigation. Full written records were maintained of the inspections. The County Council did not assign a percentage score to the risk presented by any tree. They used the Quantified Tree Risk Assessment system, in which all the County tree officers had been trained. This provided a systematic evaluation of the condition of the tree and indicated the urgency of any works that needed to be done. The County Council could demonstrate that it had taken the necessary action to minimise the risk presented by the tree.
- The Order had been requested to bring some control over the work that could be done to the tree by the adjacent land owners under their common law rights. Historic pruning, not by the current owner of 1 Cranwell Close, had created an asymmetric crown shape and this would be exacerbated by further works of that nature. The County Council wanted to be involved in any discussions about proposed works to the tree, to be given the opportunity to prevent unsuitable pruning and to do works, such as balancing pruning, to assist in maintaining the tree in its current location in the longer term. The Order would not prevent management works being carried out, but would bring it under proper control.

In answer to questions from Members of the Panel, Mr Gruber and Ms Kiss advised them that:

- The likely life expectancy of the tree was in excess of 40 years. The degree to which the tree would increase in size was not possible to determine as the County Council was likely to undertake pruning works to constrain its size to maintain it in this position;
- The owner of a tree was responsible for any damage that it caused;
- Cedar trees were not native species, but many of the trees grown in this Country, and a high proportion of garden trees, were imported species.
- The tree was asymmetrical as a result of previous human intervention. It could however achieve a more balanced form if allowed to recover. The County Council's normal approach was to leave trees alone as much as possible. The County Council would prune the tree back to keep the street light clear, as they were required to do, but would not routinely carry out crown reduction purely because the tree was becoming larger. It was not known when the tree had been pruned last, but it was likely to have been some years previously as pruning works needed to be done now;
- Under the current guidelines for building in proximity to trees, consent would not have been granted for 1 Cranwell Close to be constructed as close to the Cedar tree, which pre-dated the construction of the estate. The situation had however been inherited as it was, and must be managed.
- The tree was last inspected shortly before 30 May 2014.

Members were reminded that the imposition of the Order did not either prevent or promote works to the tree. It merely meant that any works must be granted prior consent through the submission and consideration of a Tree Works Application.

As local Ward Councillor, Cllr Penwarden advised the Panel that he could see both sides of the argument and did not wish to express a view either in support or opposing the Order. This was a significant tree, but he could appreciate the concerns being raised by the local residents.

Parish Councillor Owen considered that this was a beautiful tree and could recall it being pruned at some time in the last 20 years.

In summing up, Mr Gruber advised the Panel that the tree provided a good level of amenity to the wider area. A Tree Preservation Order would not prevent management works to the tree but would merely bring it under control to prevent inappropriate or unnecessary works being carried out.

In summing up for the objectors, Mr Casey considered that the imposition of the Order had been inappropriate as the tree had not been threatened by the neighbours and there was no indication of threat for the future. The tree provided limited amenity value and indeed prejudiced the enjoyment of the amenity provided by the car parking area. The County Council, as the tree's owner, was not sufficiently responsive to the need to undertake remedial works to the tree, which was now too large for its position. Local people did not like the tree and now wanted it to be removed.

In summing up, Mrs Dancey also considered that the tree did not provide any amenity value to the wider area. It was causing inconvenience to local people, damaging property, obstructing the pavement and creating a perception that the tree was a threat, to the distress of the elderly local residents. The risks presented by the tree and the wishes of local people should outweigh any perceived amenity value from the tree.

The Hearing was then closed.

Members considered that the general perception of the amenity value of the tree was not positive, with the majority of the local residents that had been canvassed for their views considering that it offered no amenity value to them. It was not normal practice to impose an Order on a tree that was within the ownership of a statutory organisation, such as the County Council, who would have the tree under responsible management. While there was a need for the tree to be actively managed the Panel did not consider that the imposition of the Order would promote such works to be undertaken. The need to obtain consent for any works to the tree would impose a bureaucratic process, but they did not consider that this would achieve any benefit. In addition, the tree had not been threatened by the neighbouring landowners. On balance the Panel concluded that, within its context where there were other significant trees that were being obscured by this specimen, this cedar tree did not offer sufficient additional amenity value to warrant protection and they also did not consider that the test of expediency in making the Order had been satisfied.

RESOLVED:

That Tree Preservation Order 12/14, relating to land of Halton Close, Bransgore be not confirmed.

Action: Nik Gruber and Ann Caldwell.

(AP281014)

CHAIRMAN